REMARKS

I. Summary of the Examiner's Action

A. Claim Rejections

The Examiner rejected claims 1 – 12, 18 – 28 and 30 – 31 under 35 U.S.C. § 101 as

being directed to non-statutory subject matter.

The Examiner rejected claims 13 and 31 under 35 U.S.C. § 112, first paragraph,

because of undue breadth in the claims as being single means claims.

The Examiner rejected claims 1, 2, 11 – 15, 18 – 22 and 25 – 31 under 35 U.S.C. §

102(b) as being anticipated by United States Patent No. 6,026,391 to Osborn *et al.*

(hereinafter "the Osborn patent")

The Examiner rejected claims 1, 2, 6 - 8, 11, 13, 18 – 20, 25, 26 and 29 - 31 under 35

U.S.C. § 102(e) as being anticipated by United States Patent No. 6,847,938 to Moore

(hereinafter "the Moore patent").

The Examiner rejected claims 3, 4, 9, 10, 16, 17, 23 and 24 under 35 U.S.C. § 103(a)

as being unpatentable over the Moore patent.

The Examiner rejected claims 5 under 35 U.S.C. § 103(a) as being unpatentable over

the Moore patent as applied to claim 1, and further in view of United States Patent

Application Publication No. US 2002/0059258 (hereinafter "the Kirkpatrick application")

These rejections are respectfully disagreed with, and are traversed below.

II.   Formal Matters

Applicants have amended the specification to positively recite the subject matter of

original claims 13 and 31. No new matter is added by these amendments (*See* MPEP

§ 2163.07).

Applicants have also added new claims 32 and 33. Support for claim 32 is found

throughout the specification and in particular at page 3, line 21 – page 4, line 2. Support for

claim 33 is found at, for example, claim 1 as originally submitted and page 3, lines 6 – 12.

III.   Applicants' Response

A.   Rejection of Claims 1 - 12, 18 – 28, and 30 - 31 under 35 U.S.C.
       § 101

Applicants respectfully submit that all of the claims as originally presented were

directed to statutory subject matter. Notably, several of the independent claims that the

Examiner characterized as being directed only to data structures per se recite subject matter

directed to hardware. For example, claim 13 recites "a programmed data processor." In

addition, claim 18 as originally submitted recites "a source of data . . . coupled to said query

component" and a "submitted query database" that concern computer components, *e.g.*, a database memory, operated on by computer program components executed in the context of a computer system. Claim 30 is directed to means for performing various operations. Finally, claim 31 as originally submitted recited "a communications device." It is not seen how the Examiner construes a claims reciting subject matter directed to a "programmed data processor"; "a submitted query database"; or a "communication device" as being directed to a data structure *per se*. Further, claim 1 is directed to a computer-implemented system as depicted in FIG. 1

Accordingly, the amendments made by the Applicants are done for cosmetic reasons to improve the clarity of the claims and are not made for the purposes of patentability.

The amendments to the claims find support throughout the specification and in particular at page 3, lines 6 – 12; page 13, lines 12 – 15 (claim 13 as originally presented); page 15, lines 11 – 15 (claim 29 as originally presented); and FIGS. 1 – 3 and accompanying text. Accordingly, no new matter is added by these amendments.

B.   Rejection of Claims 13 and 31 under 35 U.S.C. § 112, first paragraph

Applicants have amended claims 13 and 31 thereby mooting the Examiner's rejection of these claims.

C.   Rejection of Claims 1, 2, 11 – 15, 18 – 22 and 25 - 31 under 35 U.S.C.
       § 102(b) over the Osborn patent

Claim 1, as amended, recites:

1.   A performance prediction system, comprising:

       at least one memory to store a plurality of computer program
              components, the computer program components further
              comprising:

       a query component for receiving queries submitted by users for data
              relevant to the probability that a transaction with an entity will
              be successful;

       a data gathering component for storing relevant data about submitted
              queries; and

       a meta-query component responsive to a meta-query for returning
              information regarding previously submitted queries; and

       at least one data processor to execute the computer program
              components.

It is not seen where the Osborn patent either describes or suggests the subject matter of claim

1.

Instead, the Osborn patent concerns methods and apparatus that provide time

estimates for the amount of time required to respond to a database query:

       "The present invention provides methods and apparatus for providing

an estimate of the elapsed time required for a computer system to respond to

database queries.

In a preferred embodiment, a query performance prediction ('QPP')
module is incorporated as part of an application residing on respective user
stations connected to the computer system. The QPP module correlates
estimated system cost information provided for each new query from the
computer system DBMS with statistics compiled from pervious queries in
order to estimate the system response time to the present query."

Osborn patent, Column 1, line 65 – column 2, line 8.

In contrast to the estimation of time necessary to perform database queries of the
Osborn patent, Applicants' invention generally concerns the gathering and distribution of
information concerning, for example, the reliability of entities to a business transaction:

"'Performance prediction data' generally refers to data relevant to the
operation of businesses and other organizations that is typically maintained in
a database and made available to users through operation of one or more
queries. Performance prediction data is so named as it is typically useful as an
aid in predicting the reliability, performance, or some such aspect of a
business or other organization. For the purposes of this invention 'enhanced
performance prediction data' generally refers to information that includes at
least one component part that is derived from information descriptive of
received queries for performance prediction data. Enhanced performance
prediction data is so named as it is typically useful for providing insight not
available in the performance prediction data, or for serving as an
enhancement to the performance prediction data. Both performance
prediction data and enhanced performance prediction data are generated and
returned to a user in response to queries, which are referred to herein, for
convenience only, as one of a 'performance query' and a 'meta-query.'

> In general terms, a performance prediction query is directed to obtaining the performance prediction data, while a meta-query is directed to obtaining the enhanced performance prediction data. The performance prediction data is generated by querying a data source, such as a database of product information. The enhanced performance prediction information is derived from a stored historical record of previously received queries."

Application, page 5, lines 1 – 21 (emphasis added).

Applicants give an example of a context in which their invention is practiced:

> "Another example of performance prediction data 133 and query-relevant data 132 involves the non-limiting context of a rating system. For example, in some on-line systems buyers and sellers can purchase goods or services or can exchange goods or services, and can also rate various aspects of transactions. For example a potential buyer sends a performance query 121 to ascertain performance prediction information related to a potential seller. The returned information may include information related to the seller's reputation in previous transactions, customer satisfaction survey information, and other such data. The buyer or the seller using the system 101 may issue a meta-query 122 to ascertain enhanced performance prediction information. The enhanced information includes, for example, information descriptive of queries 120 received from previous potential buyers concerning the seller, queries received that included only the sellers in the results, queries received that excluded the seller from the results, the number of queries received about the seller, copies of received queries, copies of results returned in response to received queries, how many queries were received during some prescribed period of time; patterns of queries received

(e.g., queries received from specific locations, or from specific users), and

correlations between queries."

Application, Page 9, lines 6 – 23.

When Applicants' claims are construed in light of the specification and, in particular,

with respect to the definitions provided by the Applicants, it is clear that the Osborn patent

has little or nothing to do with the subject matter of Applicants' claims.

The Osborn patent merely provides a bare time estimate to a user performing a

database query so that the user can assess whether the amount of time to perform the search

accords with the user's needs. Nowhere does the Osborn patent either describe or suggest "a

query component for receiving queries submitted by users for data relevant to the probability

that a transaction with an entity will be successful" as in the case of claim 1. In addition,

Examiner is apparently applying the apparatus of Osborn to encompass both the

"performance prediction system" and "entity" of claim 1. It is clear from the portions of the

Application reproduced in this paper that the "entity" in claim 1 with which business may be

transacted is a person, business or other organizational group and not the "performance

prediction system" itself!

Further, Applicants note that claim 1 additionally recites "a meta-query component

responsive to a meta-query for returning information regarding previously submitted

queries." Even assuming that the Examiner is correct that Applicants' claims should be read

so as to cover the subject matter of the Osborn patent (Applicants in no way admit that this is

proper), it is not seen where a "meta-query component" is either described or suggested. In

particular, the Examiner relies on a portion of the Osborn patent (Osborn patent, Column 7,

lines 7 – 58) that uses past query response times to make a time estimate for a database query

that has yet to be performed. Applicants note that in the Osborn patent the past time

estimates regarding similar database queries are *not* provided to the user in response to a

"meta-query"; the only manner in which this information is reflected is in the time estimate

provided to the user. In conclusion, no "meta-query" as recited in Applicants' claims is

either described or suggested by the Osborn patent.

For the foregoing reasons, Applicants respectfully request that the Examiner

withdraw the rejection of claim 1. Applicants respectfully submit that independent claims

13, 18, 20 and 29 – 31 are patentable for reasons similar to those concerning claim 1 and for

other reasons attributable to their unique features. As a result, Applicants respectfully

request that the rejection of independent claims 13, 18, 20 and 29 – 31 on the basis of the

Osborn patent be withdrawn as well. Further, Applicants respectfully request that the

rejection of dependent claims 2, 11 – 12, 14 – 15, 19, 21 – 22 and 25 – 28 over Osborn be

withdrawn for reasons similar to those recited with respect to claim 1 and for other reasons

attributable to their unique features.

D.   Rejection of Claims 1, 2, 6-8, 11, 13, 18 – 20, 25, 26 and 29 - 31 under 35 U.S.C. § 102(e) over the Moore patent

The Moore patent concerns methods and apparatus for matching parties to a barter transaction:

> "The present invention is generally a system that coordinates exchanges of items between individuals without the requirement that money actually change hands. Through an internet site, an individual seeking to take part in a trade can be automatically matched to another individual with a complementary position. For example, Party 1 having Item A and desiring to swap Item A for Item B could be matched by the system to Party 2, who is registered within the system as owning Item B and desiring Item A. The system can also accommodate multi-party exchanges where three or more parties are involved in the exchange."

Moore patent, Column 4, lines 11 – 21. It is not seen where such a system that merely provides matches in barter transactions has anything to do with Applicants' invention as claimed. In contrast to the Moore patent, Applicants' invention comprises methods and apparatus which, for example, receive "queries submitted by users for data relevant to the probability that a transaction with an entity will be successful" (claim1). It is not seen how a system that only generates results in a *single* state (*i.e.*, a match) concerns methods and apparatus that provide *probabilities* that a future transaction with an entity will be successful based on data gathered concerning past transactions with that entity.

In other words, the methods and apparatus of the Moore patent identify suitable

matches for barter transactions so that no business judgment on the part of the parties to the

transaction is required, whereas in contrast Applicants' invention concerns methods and

apparatus that gather and distribute data to assist an entity in exercising business judgment

when deciding whether to transact business with another entity.

The fact that the methods and apparatus of the Moore patent do not transact in, for

example, business reputation information as in the case of Applicants' invention is made

even clearer when information that reflects on the reputation of a user of Moore's system is

discussed. Instead of recording information concerning, for example, the lack of

trustworthiness of a user so that other users can access this information when deciding

whether to transact business with the untrustworthy user, the Moore patent provides a *failsafe*

system so that a transaction will be completed regardless of the trustworthiness of users:

> "In one embodiment of the present invention, the system may be a
> feature of an online club (e.g., an online CD exchange club). The club may
> require that users pay a fee to become members, where the fee is used to
> guarantee exchanges. For example, if a member entered into an exchange
> without actually possessing the item he committed to providing, his fee could
> be used by the club to purchase a new version of the same item so that the
> other party to the exchange is protected."

Moore patent, Column 4, line 61 – column 5, line 2. Notably absent from this or any other

portion of the Moore patent is the appreciation that reputation information concerning the

trustworthiness of a user may be found useful by other users of the system. For example, a user might decide not to enter into a transaction with another user merely to avoid the headache associated with submitting a claim for a new item when the other party to the transaction did not possess the item required for the transaction. Moore does not end with this particular example and continues providing other examples of untrustworthiness and possible trustworthiness:

> "The club may also add a nominal surcharge to each transaction to maintain the system and promote the club for its own growth. In other embodiments, the system of the present invention maintains an accounting of member fees to ensure that members who engage in exchanges are active, that is, paid in full to date. The system of the present invention may also be part of a club that functions on a point system, where members can be credited or assessed points that may be exchanged at some later time for items in the club's inventory or items possessed by other club members."

Moore patent, Column 5, lines 2 – 12. Again, there is no description or suggestion that information which may be useful in helping users to decide with whom to transact business is provided by the methods and apparatus of the Moore patent.

For these reasons, Applicants respectfully submit that the Moore patent neither describes nor suggests the subject matter of claim 1. Applicants therefore respectfully request that the Examiner withdraw the rejection of claim 1 on this basis. In addition, Applicants respectfully submit that independent claims 13, 18, 20 and 29 – 31 are patentable

for reasons similar to claim 1 and for other reasons attributable to their unique subject matter.

For these reasons, Applicants respectfully request that the Examiner withdraw the rejection

of claims 13, 18, 20, and 29 – 31. Likewise, Applicants respectfully request that the

Examiner withdraw the rejection of claims 2, 6 – 8, 11, 18 – 19 and 25 – 26 for reasons

similar to those submitted above with respect to claim 1 and for reasons attributable to their

unique subject matter.

E.   Rejection of Claims 3, 4, 9, 10, 16, 17, 23 and 24 under U.S.C. § 103(a) over
      the Moore patent

As set forth above, the Moore patent merely provides matches for barter transactions.

Nowhere does the Moore patent either describe or suggest, for example, "a query component

for receiving queries submitted by users for data relevant to the probability that a transaction

with an entity will be successful" as recited in claim 1. As a result, since the Moore patent

neither describes nor suggests the type of query transactions claimed by Applicants, neither

can it describe or suggest the meta-query transactions recited in claims 3, 4, 9, 10, 16, 17, 23

and 24. For these reasons, Applicants respectfully request that the Examiner withdraw the

rejection of these claims.

F.   Rejection of Claim 5 under 35 U.S.C. § 103(a) over the Moore patent and
      Kirkpatrick application

Applicants respectfully submit that claim 5 is patentable as depending from a base

claim that is allowable over the Moore for the foregoing reasons recited with respect to

independent claim 1. Applicants therefore respectfully request that the Examiner withdraw

the rejection of claim 5.

IV.   Conclusion

The Applicants submit that in light of the foregoing amendments and remarks the

application is now in condition for allowance. Applicants therefore respectfully request that

the outstanding rejections be withdrawn and that the case be passed to issuance.

Respectfully submitted,

May 23, 2005   _David M. O'Neill (35,304)_

         Date   David M. O'Neill (Reg. No. 35,304)

Customer No.: 29683
HARRINGTON & SMITH, LLP
4 Research Drive
Shelton, CT 06484-6212
Telephone: (203)925-9400
Facsimile: (203)944-0245
email: DOneill@hspatent.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal
Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box
1450, Alexandria, VA 22313-1450.

May 23, 2005   _Deb Bagdol_

         Date   Name of Person Making Deposit